

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DONTE MCCLELLON,

11 Plaintiff, CASE NO. C18-0909-JCC
12 v. ORDER

13 CAPITAL ONE, N.A.,

14 Defendant.

15 This matter comes before the Court on Defendant's motion to dismiss (Dkt. No. 7).

16 Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral
17 argument unnecessary and hereby GRANTS Defendant's motion (Dkt. No. 7) for the reasons
18 explained herein.

19 **I. BACKGROUND**

20 Plaintiff Donte McClellon ("McClellon") alleges that Defendant Capital One Bank
21 ("Capital One") is liable for a series of fraudulent transactions from Plaintiff's checking account
22 in 2017 and 2018. (Dkt. No. 1-1.) In his three-page complaint, McClellon makes the following
23 allegations against Capital One:

24 This is an action under the Uniform Commercial Code (4.22.005 to 925) and
25 Washington Consumer Protection Act, RCW 19.86.020, based upon Defendant's
26 blatant self-dealing and other intentional negligent misconduct in conversion,
freezing, pooling, otherwise manipulating Plaintiff's funds without Plaintiff's
authorization.

1 Plaintiff further allege that the Defendant breached the contract, failed to comply
2 with Regulation E and committed the tort of negligence in the handling of
3 Plaintiff's funds. The Plaintiff seeks compensatory damages and all other
4 damages (i.e., direct and consequential damages) allowed by law, and payment of
5 costs and attorneys' fees.

6 On or about September 30th 2017, Plaintiff opened an checking account with
7 Defendant.

8 Plaintiff timely filed his good faith Regulation E claims with Defendant but the
9 Defendant failed to protect the checking account in subject, provisional credit the
10 Plaintiff and have those funds be accessible to him.

11 The fraudulent transactions at issue that took place in the checking in subject are
12 \$3,300 at Bank of America, \$1,75.86 at W FT Lauderdale respectively posted on
13 January 22nd, 2018. And another series of fraudulent transactions from SQC
14 Square Cash for \$400, \$250, \$100, \$400 posted on January 16th, 2018. And other
15 fraudulent SQC transactions: \$100 (January 26th, 2018), \$200 (January 28th,
16 2018), \$125 (January 29th, 2018), \$125 (January 29th, 2018), \$400 (December
17 31st, 2017), \$300 (December 28th, 2017), \$100 (December 28th, 2017), \$466
18 (December 3rd, 2017), \$63 (November 16th, 2017), and \$32 (November 2nd, 2017).

19 Regulation E states that a provisional credit must be provided within 10 business
20 days.¹

21 (Id. at 1–2.) McClellon originally filed his complaint in King County Superior Court. (Id. at 1.)
22 On June 21, 2018, Capital One removed the case to this Court.² (Dkt. No. 1.) On June 28, 2018,
23 Capital One filed a motion to dismiss the complaint for failure to state a claim upon which relief
24 can be granted (Dkt. No. 7). McClellon has not responded to the motion.

25 **II. DISCUSSION**

26 **A. Legal Standard for Motion to Dismiss**

27 A defendant may move for dismissal when a plaintiff "fails to state a claim upon which
28 relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must
29 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its
30 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when the

31 ¹ These allegations are taken verbatim from the complaint. (See Dkt. No. 1-1.)

32 ² The case was initially assigned to Hon. Richard A. Jones, but was reassigned to this
33 Court on July 10, 2018. (Dkt. No. 8.)

1 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
2 defendant is liable for the misconduct alleged. *Id.* at 678. Although the Court must accept as true
3 a complaint's well-pleaded facts, conclusory allegations of law and unwarranted inferences will
4 not defeat an otherwise proper Rule 12(b)(6) motion. *Vasquez v. L.A. Cty.*, 487 F.3d 1246, 1249
5 (9th Cir. 2007). A plaintiff is obligated to provide grounds for her entitlement to relief that
6 amount to more than labels and conclusions or a formulaic recitation of the elements of a cause
7 of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). “[T]he pleading standard Rule 8
8 announces does not require ‘detailed factual allegations,’ but it demands more than an
9 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678.

10 **B. Capital One's Motion to Dismiss**

11 Capital One asks the Court to dismiss McClellon's complaint because it relies on
12 conclusory allegations and does not provide sufficient facts to demonstrate Capital One is liable
13 for any wrongdoing.³ (Dkt. No. 7 at 2.) In his complaint, McClellon states that he had a checking
14 account at Capital One and that numerous fraudulent transfers were made from the account in
15 from November 2017 to January 2018. (Dkt. No. 1-1 at 1-3.) McClellon further alleges that
16 Capital One “failed to protect his account” after he “timely filed his good faith Regulation E
17 claims.” (*Id.* at 2.) McClellon also states that Capital One engaged in “blatant self-dealing and
18 other intentional negligent misconduct in conversion, freezing, pooling, otherwise manipulating
19 Plaintiff's funds without Plaintiff's authorization.” (*Id.* at 1.)

20 McClellon has not pled sufficient facts to demonstrate his claims against Capital One are
21 plausible. McClellon's claims are conclusory, in that they lack specific facts to show Capital One
22 was responsible for, or involved with, the alleged fraudulent transactions. For example,
23 McClellon does not state how Capital One “failed to protect” his checking account, or how it
24 engaged in “blatant self-dealing.” Although McClellon lists several dates on which alleged

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26 ³ The Court may consider McClellon's non-response to Capital One's motion to dismiss
as an admission that the motion has merit. *See* W.D. Wash. Local Civ. R. 7(b)(2).

1 fraudulent transactions occurred, he provides no facts that suggest Capital One was involved
2 with any of the transactions. Such allegations, represent “an unadorned, the-defendant-
3 unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. Moreover, McClellon’s vague
4 reference to “Regulation E claims⁴” does not provide the Court, or Capital One, with sufficient
5 information to determine how Capital One is liable for the claims alleged.

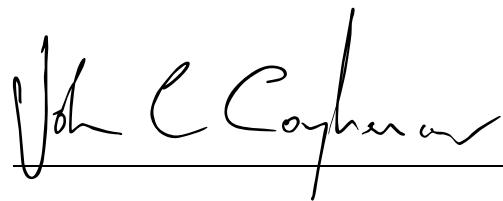
6 Even construing McClellon’s complaint liberally, the Court concludes that it fails to state
7 a claim upon which relief can be granted. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
8 (district courts are to construe *pro se* complaints liberally). Therefore, McClellon’s complaint is
9 DISMISSED without prejudice and with leave to amend. If McClellon chooses to file an
10 amended complaint, he must do so within 21 days of this order being issued. In his amended
11 complaint, McClellon must allege facts that demonstrate Capital One is liable to him for the
12 fraudulent transfers he alleges occurred in his checking account.

13 **III. CONCLUSION**

14 For the foregoing reasons, Defendant’s motion to DISMISS (Dkt. No. 7) is GRANTED.
15 Plaintiff’s complaint is DISMISSED without prejudice and with leave to amend in accordance
16 with the Court’s order. The Clerk is DIRECTED to send a copy of this order to Plaintiff.

17 DATED this 25th day of July 2018.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

4 The implementing regulations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*, are known as “Regulation E” and broadly deal with the “basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services.” 12 C.F.R. § 1005.1. It is not clear from the complaint what provision of Regulation E Plaintiff is raising.